UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

UNITED STATES CAN COMPANY

Employer

and Case 6-RC-12232

GRAPHIC COMMUNICATIONS
INTERNATIONAL UNION, LOCAL 24, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION ON OBJECTION
AND
CERTIFICATION OF REPRESENTATIVE

The Employer asserts that the possibility of a merger between the Graphic Communications International Union (hereinafter called GCIU) and another International Union raises a question concerning representation and should therefore prevent the Petitioner from being certified as the collective-bargaining representative of the employees in the unit heretofore found appropriate.[1] I have considered the evidence and the positions of the parties on this issue. As discussed below, I have concluded both that the Employer has failed to cooperate in the investigation of its Objection and that the Objection is based on speculation that a merger of International Unions, which might affect the representative status of the Petitioner herein, may occur some time in the future. Accordingly, I have overruled the

[1] The appropriate unit is:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its New Castle, Pennsylvania, facility; excluding all group leaders, office clerical employees and guards, professional employees and other supervisors as defined in the Act.

Objection and have certified the Petitioner as the collective-bargaining representative of the unit employees.

Pursuant to a Decision and Direction of Election issued by the undersigned on July 10, 2003, an election by secret ballot was conducted on August 7, 2003, in the unit heretofore found appropriate. The results of the election are detailed below:

l. Approximate number of eligible voters 31
2. Void ballots 0
3. Votes cast for Petitioner 23
4. Votes cast against participating labor organization 8
5. Valid votes counted 31
6. Challenged ballots 0
7. Valid votes counted plus challenged ballots 31
8. Challenges are not sufficient in number to affect the results of the election.

On August 14, 2003, the Employer filed a timely Objection to conduct affecting the results of the election, a copy of which was duly served upon the Petitioner. In accordance with Section l02.69 of the Board's Rules and Regulations, Series 8, as amended, an investigation of the Objection was made during which the parties were afforded an opportunity to submit evidence bearing on the issues. Having duly considered the results thereof, I hereby issue this Supplemental Decision on Objection. [2]

[2] Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, DC. Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the Supplemental Decision, are not part of the record before the Board unless appended to the request for review or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. This request for review must be received by the Board in Washington, DC, by the close of business at 5:00 p.m. on September 25, 2003.

THE OBJECTION

The Objection alleges as follows:

> The GCIU has announced a plan to merge with either the Teamsters, CWA or PACE. According to the GCIU President, declining membership has forced the union to seek a merger. The decision on a merger is expected to be made at the October meeting of the GCIU International Board.
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> The imminent merger of the GCIU with any of these three unions will create a question concerning representation in that continuity of representation will not be maintained. Under these circumstances, certification of the results of the August 7 election should not issue. Instead, the election should be set aside and the petition should be dismissed.

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SUMMARY

The Employer submitted a Statement in Support of Objection contending, inter alia, that GCIU's announcement that it will merge with the Teamsters, CWA or PACE[3] will result in a discontinuity of representation without regard to which of the unions is selected by the GCIU as its merger partner because any of the three prospective merger partners is many times larger than the GCIU. This is relevant here apparently because the GCIU is the parent organization of the Petitioner, GCIU, Local 24. The Employer further asserts that under the Constitutions of each of the three prospective merger partners, the GCIU would lose much of its autonomy in the areas of collective bargaining and strikes, and in the structure and administration of the GCIU. The Employer contends that according to the provisions of the Constitutions of each of the three prospective merger partners, "as well as the sheer bureaucracy and organizational complexity of these unions that come with their enormous size, it is clear that the relatively tiny GCIU would no longer have a separate identity following a merger."

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3 The Employer is apparently referring to the International Brotherhood of Teamsters, AFL-CIO; Communications Workers of America, AFL-CIO, CLC and Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, CLC.

As to the appropriate time for raising any question concerning representation resulting from a merger, the Employer argues that in this case the Board should act on events that may take place in the future because there is a firm basis for concluding that the GCIU will merge "in the near term" with one of the three prospective merger partners.

During the course of the investigation, the Employer's attorney related that the GCIU's "announcement" was made via two Internet postings, one of which was posted on the GCIU's website and the other of which was posted on a labor news website. According to the Employer's attorney, these postings were inadvertently discovered on July 24, 2003 by one of the attorneys in his law firm.

The article from the GCIU website, which was submitted by the Employer, discussed PACE President Boyd Young's address to the GCIU General Board[4] at its June 2003 meeting. The article indicates that GCIU President George Tedeschi invited Young to the June Board meeting as a leader of an AFL-CIO affiliated union that could be a possible GCIU merger partner. Tedeschi is quoted in the article as saying that the GCIU, "at the present time is not seeking a merger. But at some point, we may have to" seriously consider merging with another union.

The July 2003 article from the labor news website states that faced with declining membership due to factory closings, and despite increased organizing, the GCIU General Board voted to seek a merger with a larger union, and that it had opened talks with the Teamsters, PACE and the Communications Workers of America. According to the article, the GCIU Board set the following principles for any proposed merger: retaining GCIU's identity, self-governance and local autonomy, no immediate dues increase, high density in printing and paper products industries, protection of current pension plans, retention or increase in strike pay, strong commitment to organizing, education, and job safety and health, progressive politics, and active

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4 The General Board is the governing body of the GCIU.

corporate campaigns. The article also indicates that President Tedeschi is of the opinion that in order to best represent the Union and its members, the GCIU must react to the decline in its membership.

As to whether the voting unit employees were aware of the information discovered by the Employer, it is undisputed that during the campaign the Employer communicated to the employees several times about the potential merger between the GCIU and another union. Specifically, on August 4, 2003, the Employer posted an announcement (a copy of which is attached hereto as Attachment 1) at the facility entitled "The Real Union? It Won't be the GCIU!!!"

The Employer also communicated its views on the merger in two other pieces of its campaign literature. (Copies of these documents, redacted by the Employer, are attached hereto as Attachments 2 and 3). In one letter to employees, the Employer states:

The Future of the GCIU

> Just a few weeks ago, the GCIU International Board voted to merge with one of three unions: Teamsters, Communications Workers or PACE. Unfortunately, these unions have no presence in or knowledge of the lithography business. According to published reports, the GCIU was forced to pursue a merger because of "declining membership due to factory closings."
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> The proposed merger is not just a reflection on the sagging fortunes of the GCIU, it is also a reflection on their character. Simply put, Local 24 never told you that it would soon be merging and that the union you would be voting on in the August 7 election would no longer exist. In fact, when you vote on August 7, you will not know what union you are really voting about. The only two things you will know for sure is (sic) that it won't be the GCIU and that the union you do end up with will know nothing about our business or the work that you do.
>
> Local 24 had no right to withhold from you this truly vital information concerning its merger, but that's exactly what they did. Maybe you should return the favor by withholding your vote from the union.

The second piece of campaign literature informs employees that: "In addition to these general problems, the GCIU brings with it two specific, and major, problems. First, is its merger. The union on the ballot tomorrow will soon not exist. It will be replaced by either the Teamsters, CWA or PACE, unions that know nothing about lithography. It's pretty hard to cast an intelligent vote when you won't know what union you're voting about."

The dates on which employees received these two pieces of literature and the overall context in which the message was communicated are unknown because, during the investigation of its Objection, the Employer refused to provide complete and unabridged versions of the literature it distributed to the voting unit employees. The Employer was notified both verbally and in writing that its failure to provide the requested information might result in a recommendation to overrule the Objection for lack of cooperation.[5] Section 11394.1 of the Board's Casehandling Manual, Part Two, Representation Proceedings provides that the objecting party should be charged with the responsibility of offering full cooperation and whatever evidence is in its possession.

Thus, the Employer propounded a novel theory in its Objection and then has refused repeated requests by the Region to provide Employer campaign literature that reasonably relates to the Employer's Objection. Thus, the extent of the voters' knowledge of the possibility of a merger at the international level is quite significant to the question of whether the election

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[5] By letter dated August 15, 2003, the Employer was notified that notwithstanding its earlier refusal to provide copies of any campaign literature which discussed the possibility of a GCIU merger, a continued refusal in this regard could obviate further investigation and result in a recommendation to overrule the objection based on a lack of cooperation. Thereafter, the Employer provided Attachments 1, 2 and 3. During a telephone conversation on August 25, 2003, and by letter dated August 29, 2003, the Employer was asked to provide complete versions of Attachments 2 and 3, and was further informed that a refusal to provide the remainder of those writings constituted a failure to cooperate in the investigation of its Objection. No business or other justification has been offered by the Employer for its refusal to provide unredacted campaign literature. Obviously, the Employer has no claim of confidentiality or privilege inasmuch as the campaign literature was widely disseminated by it to the voting unit employees.

should be set aside. The Employer, however, has arrogated to itself the determination of what documents are relevant and material to the Region's and the Board's inquiry into the Employer's novel theory. Apparently, based upon its conclusion that the remaining information in Attachments 2 and 3 is not relevant, the Employer further concluded that it need not provide unredacted copies of Attachments 2 and 3. The Employer has thus rejected the rule of completeness by submitting only fragments of the documents referred to in Attachments 2 and 3.[6] Such action falls well short of the objecting party's responsibility set forth in Section 11394.1 of the Casehandling Manual. I find that the Employer's refusal to provide copies of the complete documents constitutes a lack of cooperation warranting my overruling the Objection. Notwithstanding this finding, I have also considered the merits of the Employer's Objection.

The Petitioner argues that the Employer's objection is a frivolous attempt to delay the bargaining process inasmuch as it stems from the possibility of a merger between the GCIU and some other international union. The Petitioner notes that no decision has been made in this regard and no merger partner has been selected.

As to the speculative status of any merger, GCIU President George Tedeschi provided testimony that on October 22, 2002, the General Board of the GCIU decided that a committee should be formed to explore the future of the union. This committee, named the Futures Committee, met on about January 9 and 10, 2003, and determined that a merger should be explored. Subsequently, on about March 4, 2003, the General Board decided that in order for the GCIU to consider any merger with another union, the other union must have density in the print and paper industry. The GCIU has since communicated with the Teamsters, CWA and PACE, and has requested that each submit certain information to the GCIU.

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[6] In proceedings conducted in accordance with the Federal Rules of Evidence, FRE 106 expresses the rule of completeness by allowing an adverse party to require the introduction of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with any writing or recorded statement or part thereof which is introduced by a party.

The Futures Committee is continuing discussions to determine whether the GCIU should merge, and if so, with which union. According to Tedeschi, no formal merger discussions have started inasmuch as to date there has been no formal decision to merge. Moreover, Tedeschi notes that even in the event a decision to merge is made, the process to be undertaken at that point is quite lengthy. Once a possible merger partner is identified, the General Board must enter into talks with the target union to reach an amicable agreement as to any merger. Then, the General Board would approve a merger document which would be sent to all of the GCIU's approximately 300 locals for a vote by the rank and file membership. If the membership approved the merger, the General Board would then negotiate with the merger partner as to a new structure. Tedeschi testified that the GCIU is seeking to retain full autonomy such that the GCIU will be self-governing and will maintain its own treasury.

ANALYSIS

The Employer cites Western Commercial Transport, 288 NLRB 214 (1988), Garlock Equipment Co., 288 NLRB 247 (1988) and Charlie Brown's, 271 NLRB 378 (1984) in its Statement in Support of Objection. All of these cases involved an examination of the identity of the bargaining representative after an affiliation or other change in organizational structure had already taken place. In each case, the Board utilized the same analysis to determine whether the identity of the bargaining representative had undergone a sufficiently dramatic change as to raise a question concerning representation. In determining whether a sufficiently dramatic change has occurred, the Board considers many factors, including the pervasiveness of the changes, the retention of autonomy by the bargaining representative, the role which the previous leaders of the bargaining representative have in the new organization and the size of the new union's body.[7]

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[7] In both Western Commercial Transport and Garlock Equipment, the Board dismissed the petition to amend certification following the affiliation of the bargaining representative. In

All of the cases cited by the Employer are wholly distinguishable from the instant case in that here there has been no formal decision to merge, no merger partner has been selected, and there has been no vote of the membership to effectuate any merger. Moreover, the merger of two international unions does not necessarily produce a sufficiently dramatic change in the representative entity as to warrant a finding of a lack of continuity in representation. See, e.g. Potter's Medical Center, 289 NLRB 201 (1988).

To the extent that it could be argued the voters had a right to know about the possibility of a merger, the Employer appears to have provided them with adequate notice of this possibility.[8]

Western Commercial Transport, nine years after the Southwest Tank Lines Employees Union (STLEU) was certified, the bargaining unit employees voted to affiliate with the International Association of Machinists (IAM) District Lodge 776. Thereafter, the STLEU and IAM District Lodge 776 filed a request to amend the certification to designate District Lodge 776 as the representative of the unit employees. The Board found that the affiliation of the STLEU with District Lodge 776 would effect a sufficiently "dramatic" change in the identity of the bargaining representative as to raise a question concerning representation, and this rendered an amendment of certification inappropriate. The Board found that the scope of the changes that would be effected as a result of the affiliation would be pervasive and that the STLEU's autonomy would disappear and would be replaced entirely by District Lodge 776's control. Moreover, the individuals who had previously led their fellow members and represented the unit would be unable to have any major role in the direction of their organization and would be replaced by District Lodge 776 employees who had no previous connection with the unit. Thus, the rights of the membership would be substantially diminished, their numbers would represent a small fraction of the new union's body, and the fundamental character of the representing organization would be altered as a result of the affiliation.

In Garlock Equipment, the independent labor organization representing the unit, which consisted solely of the production and maintenance employees employed by the employer, affiliated with the IAM. The Board found that the changes associated with the affiliation--particularly the greatly lessened autonomy of the independent labor organization--were sufficiently dramatic to result in the substitution of a new entity for that originally certified.

In Charlie Brown's, the local union which received a majority of the ballots cast in a representation election was almost immediately thereafter divided into two locals, without any employees having an opportunity to participate in the decision. Under these circumstances, the Board declined to certify the local union, set aside the election and dismissed the petition.

[8] It is, of course, impossible to determine the extent of the Employer's communication on this issue in light of its lack of cooperation already noted.

In an analogous matter, Pacific Bell, 330 NLRB 271 (1999), the Board considered the possibility of a merger between two labor organizations in the context of allegations involving a refusal to recognize and bargain in good faith in violation of Section 8(a)(5) of the Act. There, the administrative law judge, affirmed by the Board, found that the employer violated Section 8(a)(5) by refusing to bargain with the certified collective-bargaining representative of its employees, notwithstanding the employer's contention that there was confusion and ambiguity over the identity of the union which represented its employees.[9]

In Pacific Bell, the Telecommunications International Union (TIU) and the CWA entered into a Memorandum of Understanding (MOU) which contemplated a merger. The MOU called for, among other provisions, two secret ballot votes by the TIU membership. The second vote was to determine whether or not the merger was ratified. After the first vote, which authorized an interim process during which the TIU operated under a temporary charter as an affiliate of the CWA, irresolvable differences arose between the two unions and the merger was not consummated, with no second vote ever being conducted. The employer's claim of good faith doubt as to which labor organization, if any, represented its employees did not privilege it to withdraw recognition from or fail or refuse to provide information to the TIU. The judge noted that a second vote had not been held or scheduled and the fact that there were conflicting reports as to the status of the MOU did not excuse the employer's actions. The judge further found that the employer was obligated, at the very least, to "bide its time" and take appropriate action if, and when, a second vote was taken and the merger was approved.

CONCLUSION

Here, unlike the situations in the cases relied upon by the Employer, the Employer does not contend that any merger at the international level has taken place. Although the Employer claims that a merger is imminent, the facts establish that the GCIU's General Board has only

[9] The employer in Pacific Bell also filed an RM petition which was found to be without merit.

tasked its Futures Committee with determining whether the GCIU should merge, and if so, with which union. Thus, the Employer's objection is based entirely on speculation that at some unknown time in the future the GCIU will merge with an as-yet-to-be determined international union which may then result in a loss of autonomy for the GCIU sufficient to change the identity of the Petitioner[10] and create a question concerning representation.[11] The Employer has submitted no case to support its notion that, under these circumstances, particularly where the voters have been advised of the possibility of a merger in the future, a labor organization designated as the majority representative in a secret ballot election conducted by the Board should be denied certification.

Further, applying reasoning relied upon by the Board in Pacific Bell to the instant case, it is clear that any contention that a merger creates a question concerning representation can only be raised after such a merger, if any, takes place. It is beyond dispute that the extent of any changes in the identity of the bargaining representative can only be determined based on actual evidence on the relevant factors, including the rights of the membership, the size of the new union and the extent of autonomy retained by the initial representative. Such a determination cannot be made here, as there has been no merger and it is unclear at this time whether a merger will ever take place. [12]

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[10] The Employer's contention that a merger at the International level changes the identity of the Petitioner herein, which is a local union, further establishes the attenuated nature of its claim.

[11] As already noted, not all mergers of international unions produce such a result. Potter's Medical Center, supra. Manifestly, if the GCIU were to attain its announced merger goals of retaining its identity, self-governance and local autonomy, it is possible that any merger it might consummate would not be viewed as producing such a dramatic change in the representative entity that would warrant finding a lack of continuity in representation.

[12] The Employer's position is that the mere announcement that the subject of a merger is under discussion creates a question concerning representation such that a union considering merger cannot be certified. In 1995, a well-publicized announcement indicated that plans to merge were being discussed by the United Steelworkers of America, the United Auto Workers and the International Association of Machinists. By 1998, any merger appeared unlikely as the

Based on the above, I find the Employer's Objection to be without merit, and it is hereby overruled on both this basis and on the basis of the Employer's failure to cooperate in the investigation of its objection.

CERTIFICATION OF REPRESENTATIVE

Pursuant to the authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for Graphic Communications International Union, Local 24, AFL-CIO, and that, pursuant to Section 9 (a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its New Castle, Pennsylvania, facility; excluding all group leaders, office clerical employees and guards, professional employees and other supervisors as defined in the Act.

Dated at Pittsburgh, Pennsylvania, this 11th day of September 2003.

/s/ Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
1000 Liberty Avenue, Room 1501
Pittsburgh, Pennsylvania 15222

IAM was no longer involved in merger discussions. However, it was not until sometime in the year 2000 that the UAW and the USWA ceased all discussions of a merger. If the Employer's position in the instant case were valid, three of the largest industrial unions in the United States could have been prevented from being certified throughout at least a three-year period when the subject of a merger was being discussed. Clearly, a question concerning representation is raised only when a dramatic change in the collective-bargaining representative actually takes place, and not when changes are merely being contemplated.